

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI NORTHERN DIVISION**

CHRIS C. WOOD, D/B/A CCW ELECTRIC

PLAINTIFF

V.

CAUSE NO. 3:22-cv-00607-HTW-LGI

STUART C. IRBY CO., INC.

DEFENDANT

**MOTION TO STRIKE PORTION OF DEFENDANT’S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff Chris C. Wood d/b/a CCW Electric (“Wood”) and submits his Motion To Strike Portion of Plaintiff’s Motion for Summary Judgment and would show as follows:

1. Defendant Irby filed its Motion for Summary Judgment on November 1, 2023 [Dkt. #69].
2. In its Motion for Summary Judgment, Irby relies heavily upon the terms and conditions it attached as Exhibit C to the Declaration of Thomas Box. (See Dkt. #69-4)
3. This document 69-4 clearly shows a print legend at its top left corner indicating that they were printed on November 16, 2021.
3. Wood disputes that those terms and conditions are applicable to the transactions that occurred while he was a customer of Irby.
4. In fact, Irby’s November 16, 2021 terms and conditions – upon which Irby so heavily relies – did not yet exist at the time of the 2018 and 2019 transactions at issue.
5. Irby’s own filings before *this Court* in other cases clearly show that the terms and conditions were modified *after* Irby’s 2018 and 2019 transactions with Wood. In support of this, Wood attaches the following evidence:

- Exhibit “A” - Irby’s terms and conditions filed in this matter dated November 16, 2021 ;
- Exhibit “B” - Wood’s 2014 Credit Application with Terms and Conditions;
- Exhibit “C” - Irby’s terms and conditions Irby filed in *Stuart C. Irby, Co., Inc. v David Salsbury Electric. Co.*, S.D. Miss. No. 3:17-cv-00951;
- Exhibit “D” - Irby’s terms and conditions Irby filed in *Stuart C. Irby Co. V. Field Electric, LLC*, S.D. Miss. No. 3:19-cv-00600-CWR-LRA;
- Exhibit “E” - Irby’s August 24, 2020 terms and conditions Irby filed in *Stuart C. Irby Co. v. H&H Electric, Inc.*, 3:20-cv-00571-CWR-KFB.

6. In fact, there is *no evidence* that the November 16, 2021 terms and conditions even existed at the time of *any* of Wood’s transactions with Irby – the last of which occurred on August 19, 2021, per Irby’s invoices attached to its counter claim [Dkt. 4-2 at p.18].

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court strike all portions of Defendant’s Motion for Summary Judgment which rely upon the inapplicable and unenforceable November 16, 2021 terms and conditions Irby attaches to its Counter-claims and the Declaration of Thomas Box. Wood further prays that the Court make a declaration that the terms and conditions contained in Wood’s 2014 Credit Application are applicable, if any terms are determined to be applicable. Plaintiff prays for any other, different, or further relief to which the Court may find him entitled in the premises.

This the 15th day of November, 2023.

Respectfully submitted by:

Plaintiff Chris C. Wood d/b/a CCW Electric

/s/H. Hunter Twiford IV
Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I, H. HUNTER TWIFORD IV, do hereby certify that on November 15, 2023 I electronically filed the foregoing with the ECF system causing notice of such filing to be sent to the following:

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